

## **HIOSH ADVISORY COMMITTEE MINUTES**

February 17, 2005

HIOSH Training Room 427

1:00 to 2:30 p.m.

Present: David Aki for Arthur Akana, Hawaii Teamsters, Local 996  
Steven Brooks, Building Industry Association  
Paul Chang, Hawaii Carpenters Union, Local 745  
Delbert DeRego, ILWU Local 142, Maui Division  
Robert Dove, Hawaii Employers Mutual Insurance Company (HEMIC)  
Dr. Charles Kelley, Outrigger Hotel  
Robert Nakamatsu, Dept. of Human Resources Development  
Jim Newberry, American Society of Safety Engineers  
Ernest Reese, Operating Engineers Local 3, AFL-CIO  
Thomas Vendetta, ISWC/Human Resources City & County of Honolulu  
Raymond Welch, American Industrial Hygiene Association  
Clayton Winger, Monarch Insurance Service

Absent: Lani Bjork, Hilton Hawaiian Village Hotel  
Richard Botti, Legislative Information Service of Hawaii  
Gerald Estenzo, County Of Kauai  
Wade Hashizume, Hawaii Restaurant Association  
Connie Hastert, Hawaii Employers Council  
Tracy Lawson, General Contractors Association of Hawaii  
Tim Lyons, The Hawaii Business League  
Gareth Sakakida, Hawaii Transportation Association  
Hernando Tan, HERE Local 5, AFL-CIO  
Clifford Uwaine, Unite Public Workers  
Shelley Wheeling-Park, Kaiser Permanente of Hawaii

HIOSH: Allan Yokoyama, OSH Business Safety Facilitator  
Keith Tsubata, Consultation & Training Branch  
Tin Shing Chao, Occupational Health Branch  
Mark Behrens, Occupational Safety Branch  
Ellen Kondo, Consultation & Training Branch  
Terrie Mizoguchi, Consultation & Training Branch  
Gerald Ellamar, Administration & Technical Support Branch  
Ivy Spray, Recorder, Occupational Safety Branch  
Kay Lindley, Recorder, Boiler & Elevator Branch

The meeting was held in the HIOSH Training Room and called to order at 1:05 p.m. by Chairperson, Clayton Winger. A quorum was present.

1. Member introductions and roll call.
2. The November 18, 2004 minutes were accepted (moved by Paul Chang and seconded by Ray Welch).
3. HIOSH Activities/Status Reports
  - a. Administration & Technical Support (ATS) Branch – Gerald Ellamar, Acting Branch Manager

There are fourteen (14) vacant and funded positions in the HIOSH. Currently, twelve (12) positions have been or are currently being filled through probationary hires or 89-day appointments.

There were fifty-one (51) complaints from October 1, 2004 through December 31, 2004. Twenty-six (26) of those were handled by either phone or fax. The remaining twenty-five (25) resulted in an inspection.

There has been one discrimination complaint which is currently being investigated.

Paul Chang of the Hawaii Carpenters Union, Local 745 asked if the HIOSH has jurisdiction over any federal discrimination complaints. Allan Yokoyama responded that the HIOSH will investigate discrimination cases that fall under its jurisdiction, such as 11(c) complaints.

- b. Occupational Safety (OS) Branch – Mark Behrens, Manager

The Occupational Safety Branch has twelve (12) funded positions. Currently there are three (3) vacancies: One (1) OSHCO IV position based on Maui; and one (1) OSHCO I position and one (1) Supervising OSH Compliance Officer I, based on Oahu.

Mark Behrens also reported that two (2) fatalities have occurred since our last meeting. Currently, the HIOSH is investigating one of the fatalities.

The Safety Branch has conducted 238 inspections.

Steve Brooks requested a breakdown on the inspections between the Construction Industry and the General Industries. Mark Behrens replied that the ratio of inspections between the two industries is approximately 50/50. Dave Aki wanted to

express his appreciation to three (3) outstanding inspectors who recently conducted an inspection at the Oahu Transit (TheBus). They were Dave Odan, OSHCO IV; Richard Lee, EHS III; and Tin Shing Chao, Acting Occupational Health Branch Manager.

c. Occupational Health (OH) Branch – Tin Shing Chao – Acting Branch Manager

The Occupational Health Branch has nine (9) funded positions. Currently there are four (4) vacancies: one (1) EHS III and two (2) EHS IV; and the OH Branch Manager, due to the recent retirement of Masa Ogata.

d. Consultation & Training (C & T) Branch – Keith Tsubata – Acting Branch Manager

The C&T has seven (7) funded positions, with two (2) vacancies for the OSH Advisor IV position on Oahu and Maui. The two vacancies are filled temporarily with 89-day appointments.

Currently, there are twelve (12) Safety & Health Achievement Recognition Program (SHARP) companies and three (3) Voluntary Protection Programs (VPP) companies. There are thirty-two (32) SHARP applicants, and six (6) of them will be receiving preliminary approval soon.

Jim Newberry indicated that companies who have received approval as a SHARP recipient should be requesting a 5% discount with their insurance company. He also mentioned that the Administrative Rules should note that a 5% discount is available.

Allan Yokoyama congratulated James Decker, Safety Manager of Swinerton Builders for being approved as a SHARP participant. Swinerton Builders is the most recently approved SHARP recipient, the twelfth (12<sup>th</sup>) Hawaii SHARP Company.

e. Boiler & Elevator Branch

f. Hoisting Machine Operators' Advisory Board (HMOAB)

Clayton Winger requested that if any HIOSH Management team members are not able to attend future meeting, they should provide to the committee an updated, written report prior to the meeting.

Allan Yokoyama informed the committee that the B&E and HMOAB will provide a report with updated information from the last committee meeting (November 2004). This information will be sent to Clayton Winger.

4. Sub-Committee Reports

a. Administrative Rules Regarding Leased Employees/Professional Employer Organization (PEO)

Bob Dove distributed the interpretation of Administrative Rules – Section 1904.31 Covered employees (66 FR 6131, Jan. 19, 2001) to the members. For purposes of the meeting, the handout is referred to as Exhibit A.

Dual Reporting Responsibility:

The issue related to the PEOs and temporary services is determining who is the employer, who is responsible for workplace safety, and who is responsible for filing the report. What isn't addressed in the Administrative Rule are exemptions-- exemptions for the small employer or exemptions for an exempt industry. That portion of the rules needs to be clarified. The subcommittee's recommendation is that in a dual employment situation, if one employer is not exempt, no employers should be exempt from reporting.

Bob Dove informed the committee that California has addressed this situation regarding citations. California refers to dual employment situations as those having a primary and secondary employer. The primary employer is the leasing company or PEO, and the secondary employer is the client of the PEO. In California, a lot of requirements are placed on the PEO. For example, the primary employer is responsible for ensuring that the employee receives proper safety training on the job-site, and that the employee has the proper safety equipment. If this is effectively done, the PEOs are relatively immune from citations, and the citation would go to the client company. If the primary employer does not get proper safety training for the employee, there may be dual citations.

Allan Yokoyama informed Bob Dove to work with Gerald Ellamar for assistance. Allan will contact the California OSHA and request information on PEOs. This information will be used as reference materials for the committee.

Bob Dove questioned what would the HIOSH need to refine the standard and to move forward with the recommendation? Allan suggested that Bob Dove and the ATS meet to determine the course of action to pursue and identify the goals of the sub-committee.

b. Drugs in the Workplace – Dr. Charles Kelley

Dr. Kelley gave a presentation on Drugs in the Workplace. For purposes of this meeting the handout is referred to as Exhibit B.

The following are excerpts from Dr. Kelley's handout. The most common drugs in the work place are caffeine and alcohol. Illegal drugs are what we are talking about today. The most common drug tests are ordered for marijuana, cocaine, crack cocaine, amphetamines (including methamphetamine, crystal methamphetamine, or ice), morphine, which would be heroin, and phencyclidine (PCP or angel dust).

The illegal drug problem is huge in Hawaii. It is affecting all levels of society. Seventy-six percent (76%) of all drug abusers are currently employed. Employers need to have a strong drug policy to educate supervisors and employees, perform drug screenings, and have a plan for enforcement of the drug policy. The first step would be discipline, then rehabilitation, if necessary. If those things do not work, the employee would then be terminated. These are the basic steps for an employer.

Dr. Kelley reported that the Federal Transit Administration saw positive drug test results drop from 13.6% to 4.8% in the first 10 years. Dr. Kelley would like this subcommittee to come up with an action plan because there is a need for a uniform position on drugs. Does the committee need to raise funds for the HIOSH, do we need to publicly advocate for the HIOSH, or do we need to propose new legislation?

Dr. Kelley asked what type of language would be used, and how would the HIOSH cite for drugs in the workplace. Mark Behrens replied that in the General Safety & Health Requirements it states that, "no person shall be permitted to work under the influence of liquor or drugs." The HIOSH inspector cannot cite a person for using drugs or alcohol while making an inspection unless they see physical evidence. The HIOSH also cannot order a drug test, because this is the employer's responsibility.

The subcommittee recommends that the standards be clarified and enforceable. Also, the information needs to be distributed to the employers that discounts are available from insurance companies for businesses that do random drug testing.

c. Safety Recognition and Awards – Clayton Winger

Clayton Winger would like to have a broader base for the Safety Recognition awards. Most of the awards previously given out were for the construction industry. He would like to include other service industries. Clayton Winger is getting information from other states on how they manage their Safety Recognition program, and would also like someone from the Executive Committee to serve on this subcommittee. The subcommittee is being cautious when evaluating whether or not a company meets the standard. Allan Yokoyama mentioned that the ASSE puts on the conference, therefore they should establish the standards. The ASSE will inform the HIOSH of any concerns, and in turn, the HIOSH will inform the committee. The HIOSH would assist the ASSE, to the extent possible, with assistance on their recognition program.

The members discussed ways to improve on participation with recognition of exemplary companies. Mark Behrens nominated the Outrigger Hotel to be recognized for the tremendous strides they have made in their safety program. Bob Nakamatsu suggested some kind of publicity such as press releases, or an ad in the local newspaper featuring a Safety Celebrity or perhaps the Safest Companies to work for. Allan Yokoyama suggested getting the elected officials involved since the conference is normally held during the legislative session.

5. Old Business

- a. The next HIOSH Advisory Committee meeting is scheduled for Thursday, May 19, 2005 in the HIOSH Training Room on Oahu.

The committee members discussed the possibility of having another neighbor island meeting, this time in Kona. Allan Yokoyama suggested a one-day training session throughout the day as an opportunity for outreach and compliance assistance, and having the committee meeting conducted sometime during the day. With this format, the Director has agreed to support the committee's members with outreach to the stakeholders in Kona.

The members were informed by Chairperson Clayton Winger to decide by the HIOSH Advisory Committee meeting May 17, 2005 whether or not to have the August 18, 2005 committee meeting in Kona. Allan Yokoyama will check on the Director's availability for August 18, 2005. Dr. Kelley indicated he could assist by with getting a hotel in Kona.

- b. Safety and Health Program Assessment Worksheet, Form 33 – Ray Welch. For purposes of this meeting, the handout is referred to as Exhibit C. Ray Welch distributed two worksheets on the Safety and Health Achievement Recognition Program (SHARP) – Form 33 Worksheet. He informed the committee there are two versions of the Form 33. According to Ray Welch, there are 15 to 20 states that use the longer form, but the HIOSH uses the modified form. He also stated that his presentation does not reflect the official views of the HIOSH on their implementation of Form 33.

Clayton Winger asked if there was an interest in discussing Form 33 further. Would it be of value to go through the HIOSH version and find out how they score SHARP and VPP? Clayton Winger asked that the HIOSH make a presentation on how Form 33 is used in their evaluation for SHARP and VPP at the next committee meeting.

- c. Other Old Business

None.

6. New Business

James Decker of Swinerton Builders asked if anyone knew about the legislative bill regarding grievance procedures for the HIOSH. Allan Yokoyama replied that the proposed bill was not scheduled for hearing and it would be inappropriate for the HIOSH to comment at this time. Jim Newberry suggested that the committee members look on the legislative website to view the bill because it will be too late to do anything by the time the next HIOSH Advisory Committee meeting is held.

7. Adjournment

The meeting adjourned at 2:42 p.m.